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Elizabeth Montiel

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 ELIZABETH MONTIEL, an individual, ) Case Number: 08cv243 DMS  
12 Plaintiff, )  
13 vs. )  
14 CRESCENT ELECTRIC SUPPLY COMPANY, a )  
corporation; and DOES 1 through 25, inclusive, ) Date: May 2, 2008  
15 Defendants. ) Time: 1:30 p.m.  
16 ) Courtroom: 10  
17 )

18 TO: DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

19 NOTICE IS HEREBY GIVEN that on Friday, May 2, 2008, at 1:30 p.m., or as soon thereafter as  
20 counsel may be heard by the above-entitled Court, located at United States District Court, 940 Front  
21 Street, San Diego, CA 92101, Courtroom 10, in the courtroom of the Honorable Judge Dana M. Sabraw,  
22 Plaintiff Elizabeth Montiel will and hereby does move the Court for Dismissal Without Prejudice. This  
23 motion is brought on the following grounds:

24 The Fair Employment and Housing Act (hereinafter "FEHA") includes California Government  
25 Code section 12945, which authorizes qualified employees disabled by pregnancy to take a pregnancy  
26 disability leave of up to four months. Cal. Gov. Code, § 12945. FEHA also includes California  
27 Government Code section 12945.2, which authorizes qualified employees to take an additional California  
28 Family Rights Act (hereinafter "CFRA") leave of up to 12 weeks to care for the birth of a child. Cal.

1 Gov. Code, § 12945.2. California courts “are required to give great weight” to the Fair Employment and  
 2 Housing Commission’s (the administrative agency charged with interpreting the FEHA) “interpretation  
 3 of its own regulations and the statutes under which it operates.” Bradley v. Department of Corrections &  
 4 Rehabilitation, 158 Cal.App.4th 1612, 1625 (2008).

5 California Code of Regulations, title 2, section 7297.7 (hereinafter “section 7297.7”) provides  
 6 that it shall be an unlawful employment practice for “any person” to retaliate against an employee  
 7 because of her exercise of her right to take CFRA leave. California Code of Regulations, title 2, section  
 8 7297.0 (hereinafter “section 7297.0”) provides the definitions that apply to section 7297.7. Although  
 9 “person” is not expressly defined, section 7297.0 further provides that the “definitions in the federal  
 10 regulations issued January 6, 1995 (29 CFR Part 825)...shall also apply to” section 7297.7. The Code of  
 11 Federal Regulations, title 29, section 825.800, defines “[p]erson” as “an individual....” for purposes of  
 12 Code of Federal Regulations, title 29, Part 825. Thus, section 7297.7 provides that it shall be an unlawful  
 13 employment practice for any individual to retaliate against an employee because of her exercise of her  
 14 right to take CFRA leave.

15 PLAINTIFF alleges in her complaint that on or about October 12, 2006, PLAINTIFF was  
 16 disabled by pregnancy and was on pregnancy disability leave. (See Complaint, ¶ 10 attached as Exhibit  
 17 “A” to Declaration of Christopher B. DeSaulniers in Support of Plaintiff’s Motion to Dismiss Without  
 18 Prejudice.) PLAINTIFF subsequently started her statutorily authorized leave under CFRA. (See  
 19 Complaint, ¶¶ 28-29.) Mr. Jeffrey J. Hoyt, who was PLAINTIFF’s supervisor and Branch Manager of  
 20 DEFENDANT’s Vista, California location, falsely told PLAINTIFF that he would take steps to provide  
 21 her with additional leave and subsequently falsely stated that PLAINTIFF’s position with DEFENDANT  
 22 was secure. (See Complaint, ¶¶ 14 and 21.) PLAINTIFF will allege that she relied on these false  
 23 assurances to her detriment. In spite of these assurances, PLAINTIFF was terminated from her position  
 24 with DEFENDANT prior to the expiration of her statutorily authorized leave. (Complaint, ¶ 24.)

25 Consequently, Plaintiff will allege in a newly-filed complaint in state court that Mr. Hoyt  
 26 retaliated against her by the above-described conduct because she took leave under the CFRA. The  
 27 retaliation by Mr. Hoyt for PLAINTIFF’s exercise of her CFRA rights also included (1) failing to engage  
 28 in the interactive process in good faith to determine if a reasonable accommodation existed which would

1 have allowed PLAINTIFF to continue her employment, and (2) failing to provide a reasonable  
2 accommodation, both of which are required by California law. For these reasons, PLAINTIFF is seeking  
3 to dismiss this case in order to subsequently file a case in Superior Court of California, San Diego  
4 County naming Mr. Hoyt as an additional defendant.

5 Based on PLAINTIFF's knowledge and belief, Mr. Hoyt is domiciled in and is a citizen of  
6 California. Because PLAINTIFF is also domiciled in California and is a citizen of California, by adding  
7 Mr. Hoyt as a defendant, Federal courts would no longer have diversity jurisdiction. Accordingly,  
8 dismissal without prejudice will allow PLAINTIFF to refile this case in California Superior Court.

9 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and  
10 Authorities filed herewith, the Declaration of Christopher B. DeSaulniers, the pleadings and papers on  
11 file herein, and upon such other matters as may be presented to the Court at the time of the hearing.

13 DATED: March 5, 2008

Respectfully submitted,

14 LAW FIRM OF ZAMPI AND ASSOCIATES

16 By: Gerald B. Derman  
17 GERALD B. DETERMAN

18 By: Christopher DeSaulniers  
19 CHRISTOPHER B. DESAULNIERS  
20 Attorneys for Plaintiff,  
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